

**REMARKS UNDER 37 CFR § 1.111**

**Formal Matters**

Claims 1, 5-22, 25-33, 40-54, 5891, 96-97, 100-107, 225, 229-255, 282 and 284-300 are pending after entry of the amendments set forth herein.

Claims 1, 4-22, 25-33, 40-54, 5891, 96-97, 100-107, 225, 229-255, 282 and 284-300 were examined. Claims 1, 5-22, 25-33, 40-54, 5891, 96-97, 100-107, 225, 229-255, 282 and 284-300 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

**The Office Action**

**Claims Rejected Under 35 U.S.C. Section 102(e) (Sinofsky et al.)**

In the Official Action of September 28, 2006, claims 1, 5, 9-45, 106, 298 and 299 were rejected under 35 U.S.C. Section 102(e) as being clearly anticipated by Sinofsky et al., U.S. Patent No. 6,558,375. The Examiner referred to Figs. 1-7 and column 8, line 6 to column 17, line 15 as clearly anticipating the rejected claims. In view of the above amendments and following remarks, Applicants respectfully traverse this ground of rejection.

Initially, Applicants note that Sinofsky et al., U.S. Patent No. 6,558,275 does not appear to have a column 8 or a column 17, and the Examiner's reference thereto appears to be a typographical error.

Sinofsky et al. discloses a hand held cardiac ablation instrument that includes a circumferential ablation element 12, and a handle 14 for manual placement of the element 12 in contact with a targeted tissue area. A light transmitting optical fiber 18 and a scattering medium 28 are provided in a housing 26 that includes a reflective end 24. Thus, when light is emitted axially from the distal end of the optical fiber 18, light is dispersed by the scattering particles 22, reflected by the reflective end 24 and scattered again.

Claim 1 has been amended above to further recite that the claimed at least one ablating element

emits ablating energy in a direction transverse to a longitudinal axis of said at least one lumen. Support for these amendments can be found for example, in Figs. 8 and 9 and the description thereof, and throughout the specification. It is respectfully submitted that Sinofsky et al. clearly emits the light ablating energy axially from the distal end of the optical fiber 18, in an axial direction aligned with the longitudinal axis of the housing 26.

With regard to claim 106, this claim has been amended to recite emitting ablative energy substantially radially. Support for this amendment can be found in claim 106 as originally presented, Figs. 8 and 9 and the description thereof, and throughout the specification.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 5, 9-45, 106, 298 and 299 under 35 U.S.C. Section 102(e) as being clearly anticipated by Sinofsky et al., U.S. Patent No. 6,558,375, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Lennox et al. in combination with Costello et al. and Cox et al.)**

Claims 107, 225, 229-255, 282, 284-297 and 300 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Cox et al., WO 98/17187. The Examiner asserted that Lennox et al. teaches the use of a flexible sheath with a window for transmitting radiation to tissue, that Costello et al. teaches the equivalence of stationary and translatable energy applications, and that Cox et al. teaches the equivalence of laser, ultrasound, microwave and cryosurgical energies as means of ablation. The Examiner asserted that it would have been obvious to employ the probe translations and optics of Costello et al. in the method of Lennox et al. since they are equivalent to the stationary probe and can create a longer lesion. The Examiner further asserted that it would have been obvious to employ the maze procedure and ablation means of Cox et al. in the combined method of Lennox et al. and Costello et al. In this regard, the Examiner noted that Lennox et al. teaches cardiac procedures.

Claim 107 has been amended to recite that the energy delivery portion is locatable at any position with the distal end portion to deliver ablation energy therethrough. Both Lennox et al. and Costello et al require the implementation of a window through which the laser light is delivered to treat the prostate. Thus, the laser source cannot be located along other portions of the catheter that do not include the window. In contrast, the present invention can deliver ablation energy through the wall of the tubular member.

Claim 225 has been amended to further specify that the ablative device is advanced through the at least one lumen having a radially asymmetric geometry. The radially asymmetric geometry of the lumen prevents rotation of the ablative device with respect to the ablation sheath during the advancement of the ablative device to orient it in a predetermined direction toward the tissue surface. It is respectfully submitted that none of the cited references teach or suggest this feature.

Claim 282 has been amended to recite a malleable tubular member and to further recite manipulating the malleable distal end portion of the malleable tubular member to create a desired shape of an ablation path. It is respectfully submitted that none of the cited references teach or suggest this feature.

Claims 293 and 297 have been amended to further recite maintaining alignment of the ablation means or device and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally positioning, by a cooperative configuration of the ablation means or device and the at least one lumen. It is respectfully submitted that none of the cited references teach or suggest these features.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 107, 225, 229-255, 282, 284-297 and 300 under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Cox et al., WO 98/17187, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Lennox et al. in combination with Costello et al. and Diederich et al.)**

Claims 1, 9, 43-45, 96-97 and 298-299 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101. The Examiner asserted that Lennox et al. teaches the use of a flexible sheath with a window for transmitting radiation to tissue, that Costello et al. teaches the equivalence of stationary and translatable energy applications, and that Diederich et al. teaches the desirability of providing transmural ablations in the heart. The Examiner asserted that it would have been obvious to employ the probe translations and optics of Costello et al. in the method of Lennox et al. since they are equivalent to the stationary probe and can create a longer lesion. The Examiner further asserted that it would have been obvious to employ the transmural lesions

of Diederich et al. in the method of Lennox et al., since this is what provides conduction blockage.

Applicants respectfully traverse. Lennox et al. is not directed to creating conduction blockage, but rather for therapeutic destruction of tissue (such as plaque in an artery, see Figs. 3-6) or photo-coagulation treatment, see column 3, lines 34-37. There is no suggestion by Lennox et al. of treatment to perform cardiac ablation and there is no disclosure that the Lennox et al. device could successfully perform such ablation without undesirable results or side effects.

Further, 1 has been amended above to further recite maintaining alignment of the ablative device and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally slidably positioning steps, by a cooperative configuration of the ablation means and the at least one lumen, which is neither taught nor suggested by any of the references applied.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 9, 43-45, 96-97 and 298-299 under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Lennox et al. in combination with Costello et al., Diederich et al. and Cox et al.)**

Claims 5-8, 10-22, 25-33, 40-42, 46-54, 58-72, 100-117, 225, 229-255, 282, 284-297 and 300 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as applied to claims 1, 9, 43-45, 298 and 299 above, and further in combination with Cox et al., WO 98/17187. The Examiner asserted that Cox et al. teaches the equivalence of laser, ultrasound, microwave and cryosurgical energies as means of ablation, ablating tissue of the heart through a hole in the chest wall, use of a malleable end which can be pre-shaped, use of a sheath with a cut-out window, and various manipulations of the device including ablating around the pulmonary vein, ablation on the epicardium, and positioning the device in three or more positions. The Examiner asserted that it would have been obvious to employ the maze procedure and ablation means of Cox et al. in the combined method of Lennox et al., Costello et al. and Diederich et al. or to employ the particular ablation steps of the combined teachings of Lennox et al., Costello et al. and Diederich et al. in the method of Cox et al. since Cox et al. teaches no particular form for the non-cryogenic ablation elements.

Applicants respectfully traverse. It is respectfully submitted that neither Lennox et al. nor Costello et al. teach or disclose cardiac ablation steps, and there would be no suggestion that these devices would be successful in performing the methods of Cox et al. The methods of Diederich et al. do not deliver ablation energy through a wall of a tubular member through which an ablation device is advanced, but rather apply the ablation element directly to tissue, e.g., see Fig. 5A. Accordingly, none of Deiderich et al.'s methods would practice the currently claimed method steps of the rejected claims.

Further, claims 5-8, 10-22, 25-33, 40-42, 46-54, 58-72 and 100-105 depend from claim 1 and, it is respectfully submitted, are allowable for at least the same reasons provided above with regard to claim 1, since Cox et al. also fails to disclose or suggest maintaining alignment of the ablative device and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally slidably positioning steps, by a cooperative configuration of the ablation means and the at least one lumen.

With regard to claim 106, it is respectfully submitted that neither Lennox et al. nor Costello et al. teaches emitting ablative energy substantially radially relative to a longitudinal axis thereof, and Diederich does not transluminally slidably position an energy delivery portion through a guide catheter and deliver ablative energy therethrough. Accordingly, none of these methods applied to Cox et al. would meet all of the limitations of claim 106. Since Cox et al. is directed to cardiac ablation and Lennox et al. and Costello et al. are not, there would have been no motivation to replace the laser systems of Lennox et al. and Costello et al. with the cryoablation system of Cox et al. as there is no indication that this would improved the uses of the device for the methods disclosed by Lennox et al. and Costello et al. These same arguments apply to claim 107. Additionally, the laser probe of Lennox et al. as well as that of Costello et al. is not locatable at any position within a distal end portion of a flexible tubular member, and the ablation probe of Diederich et al. is not positionable within a distal end of a flexible tubular member at all.

With regard to claim 225, none of the cited references teaches or discloses an ablation sheath having at least one lumen having a radially asymmetric geometry, or advancing an ablative device through the at least one lumen having a radially asymmetric geometry to locate the energy delivery portion of the device at least partially within said distal end portion of the sheath, said radially asymmetric geometry of said at least one lumen preventing rotation of said ablative device with respect to the ablation sheath during the step of advancing to orient the predetermined direction toward said tissue surface.

With regard to claim 282, none of the applied references teaches or suggests using an elongated

malleable tubular member having at least one lumen and a distal end portion and manipulating the malleable distal end portion to create a desired shape of an ablation path. The Examiner asserted that Cox et al. discloses use of a malleable end which can be pre-shaped. However, Applicants respectfully submit that this refers to a probe having a malleable, e.g., see Fig. 45, and not a malleable tubular member that can be shaped to define an ablation path and through which an ablation device can be passed.

With regard to claim 293, it is respectfully submitted that none of the applied references discloses or teaches maintaining alignment of the ablation means and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally positioning, by a cooperative configuration of the ablation means and the at least one lumen.

With regard to claim 297, it is respectfully submitted that none of the applied references discloses or teaches maintaining alignment of the ablation device and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally positioning, by a cooperative configuration of the ablation device and the at least one lumen.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 5-8, 10-22, 25-33, 40-42, 46-54, 58-72, 100-117, 225, 229-255, 282, 284-297 and 300 under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as applied to claims 1, 9, 43-45, 298 and 299 above, and further in combination with Cox et al., WO 98/17187, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Lennox et al. in combination with Costello et al., Diederich et al. and Swanson et al.)**

Claims 70-79 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as applied to claims 1, 9, 43-45, 96-97, 298 and 299 above, and further in combination with Swanson et al. The Examiner asserted that Swanson et al. teaches using temperature sensors to control ablation and electrodes to pace, map, etc., the heart in a maze procedure wherein the pulmonary vein is encircled. The Examiner asserted that it would have been obvious to employ the sensors and the pulmonary vein encircling device in the combined method of Lennox et al., Costello et al. and Diederich et al. since this would enable the performance of beneficial cardiac

procedures.

Applicants respectfully traverse. As noted above, Applicants respectfully submit that it would not have been obvious to use Lennox et al. or Costello et al. devices for cardiac ablation, as they are not described for such use and there is no indication that such use would be safe or successful. Further Diederich et al. teaches the use of a circumferential ablation member 450 to form a lesion around a pulmonary vein ostium, and use of the pulmonary vein encircling device of Swanson et al. would destroy Diederich et al.'s teaching.

Still further, claims 70-79 depend from claim 1 and it is respectfully submitted that none of the applied references teaches or discloses maintaining alignment of the ablative device and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally slidably positioning steps, by a cooperative configuration of the ablation means and the at least one lumen.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 70-79 under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as applied to claims 1, 9, 43-45, 96-97, 298 and 299 above, and further in combination with Swanson et al., as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Lennox et al. in combination with Costello et al., Diederich et al. and Kesten et al.)**

Claims 90-91 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as applied to claims 1, 9, 43-45, 96-97, 298 and 299 above, and further in view of Kesten et al., WO 96/35469. The Examiner asserted that Kesten et al. teaches delivering ablation devices with a pre-shaped sleeve to reach the ventricles via the peripheral veins, and that it would have been obvious to employ the sheath, delivering route and treatment region of Kesten et al. in the combined method of Lennox et al., Costello et al. and Diederich et al., or to employ the directional slidable probe in a sheath of the combined method of Kesten et al., since this would allow the treatment of an elongated area without repositioning the device, and in either case, to treat one of the atria.

Applicants respectfully traverse. As noted above, Applicants respectfully submit that it would

not have been obvious to use Lennox et al. or Costello et al. devices for cardiac ablation, as they are not described for such use and there is no indication that such use would be safe or successful.

Still further, claims 80-91 depend from claim 1 and it is respectfully submitted that none of the applied references teaches or discloses maintaining alignment of the ablative device and the at least one lumen relative to a rotational direction about a longitudinal axis of the at least one lumen, during said transluminally slidably positioning steps, by a cooperative configuration of the ablation means and the at least one lumen, as Kesten et al. does not deliver ablative energy through an ablation sheath or tubular member, but extends the therapeutic device 3 distally out of the open end of the delivery catheter to apply therapy.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 80-919 under 35 U.S.C. Section 103(a) as being unpatentable over Lennox et al., U.S. Patent No. 5,454,807 in combination with Costello et al., U.S. Patent No. 5,593,404 and Diederich et al., U.S. Patent No. 6,117,101, as applied to claims 1, 9, 43-45, 96-97, 298 and 299 above, and further in view of Kesten et al., WO 96/35469, as being inappropriate.

**Claims Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting**  
**(U.S. Patent No. 7,033,352)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 7,033,352. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the patent anticipate the claims of the application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the patent anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-



33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 7,033,352, as being moot.

**Claims Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting**  
**(U.S. Patent No. 6,962,586)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,962,586. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the patent anticipate the claims of the application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the patent anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,962,586, as being moot.

**Claims Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting**  
**(U.S. Patent No. 6,673,068)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-13, 19-64 and 68 of U.S. Patent No. 6,673,068. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims

of the patent anticipate the claims of the application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the patent anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-13, 19-64 and 68 of U.S. Patent No. 6,673,068, as being moot.

**Claims Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting  
(U.S. Patent No. 6,312,427)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,312,427. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the patent anticipate the claims of the application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the patent anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine

of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,312,427, as being moot.

**Claims Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting (U.S. Patent No. 6,245,062)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-13, 15-16 and 18-19 of U.S. Patent No. 6,245,062. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the patent anticipate the claims of the application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the patent anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-13, 15-16 and 18-19 of U.S. Patent No. 6,245,062, as being moot.

**Claims Provisionally Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting (U.S. Patent Application No. 10/211,685)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 22, 43, 47-49, 53-54, 97 and 116 of U.S. Patent Application No. 10/211,685. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the co-pending patent application anticipate the

claims of the instant application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the co-pending patent application anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 22, 43, 47-49, 53-54, 97 and 116 of U.S. Patent Application No. 10/211,685, as being moot.

**Claims Provisionally Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting (U.S. Patent Application No. 10/253,737)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8 and 14-17 of U.S. Patent Application No. 10/253,737. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the co-pending patent application anticipate the claims of the instant application, as the sue of the device would read on the method.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Applicants do not agree that the claims of the co-pending patent application anticipate the claims of the present application, in view of the above amendments made to the present claims, and since device claims cannot anticipate method claims, and therefore do not acquiesce to this ground of rejection. However, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of

claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8 and 14-17 of U.S. Patent Application No. 10/253,737, as being moot.

**Claims Provisionally Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting (U.S. Patent Application No. 10/348,256)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 15-42 of U.S. Patent Application No. 10/348,256. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the co-pending patent application anticipate the claims of the instant application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the co-pending patent application anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 15-42 of U.S. Patent Application No. 10/348,256, as being moot.

**Claims Provisionally Rejected Under the Judicially Created Doctrine of Obviousness-Type Double Patenting (U.S. Patent Application No. 10/897,232)**

Claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as

being unpatentable over claims 1-72 of U.S. Patent Application No. 10/897,232. Although the conflicting claims are not identical, the Examiner asserted that they are not patentably distinct from one another, since the claims of the co-pending patent application anticipate the claims of the instant application.

Applicants note that claim 4 has been canceled from this application, and the rejection of claim 4 appears to be a typographical error. Although Applicants do not agree that the claims of the co-pending patent application anticipate the claims of the present application, in view of the above amendments made to the present claims, and therefore do not acquiesce to this ground of rejection, in order to advance the prosecution of the instant application, Applicants are submitting herewith a Terminal Disclaimer in order to obviate this ground of rejection.

Accordingly, in view of the above amendments, remarks and the submission of a Terminal Disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1, 4-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300 (sic, 1, 5-22, 25-33, 40-54, 58-91, 96-97, 100-107, 225, 229-255, 282 and 284-300) under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-72 of U.S. Patent Application No. 10/897,232, as being moot.

### **Conclusion**

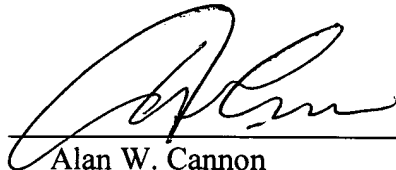
Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-117.

Respectfully submitted,

LAW OFFICE OF ALAN W. CANNON

Date: 1/29/07

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